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LEGISLATIVE HISTORY OF THE TEN DOLLAR ATTORNEY FEE LIMITATION IN CLAIMS FOR VETERANS' BENEFITS

COMMITTEE ON VETERANS' AFFAIRS

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FOREWORD

Sec. 3404(c)(2) of title 38, United States Code, limits the amount a veteran can be charged by attorneys who assist him in claiming benefits from the Veterans' Administration. The history of the statute provides important information which can illuminate the reasoning and motivation for enacting this legislation. Accordingly, the Committee requested the American Law Division of the Library of Congress to review all enactments concerning limits on attorney fees payable by veterans, and to review all pertinent Congressional debate in order to derive a sense of the purpose behind the various enactments limiting such fees. The information contained in this Committee Print is the result of that review.

The Committee wishes to acknowledge the authorship of Mr. Henry Cohen and Richard Ehlke of the American Law Division of the Library of Congress and to extend its appreciation for their efforts in producing this Committee Print.

G.V. "SONNY" MONTGOMERY,

Chairman, Committee on Veterans' Affairs.

LEGISLATIVE HISTORY OF THE TEN DOLLAR ATTORNEY FEE LIMITATION IN CLAIMS FOR VETERANS' BENEFITS

INTRODUCTION

Congress, since the Civil War, has limited the amount a lawyer may charge a veteran for representing him in connection with a claim before the Veterans' Administration or its predecessors.[1] This limitation presently provides:

> The Administrator shall determine and pay fees to agents or attorneys recognized under this section in allowed claims for monetary benefits under laws administered by the Veterans' Administration. Such fees—(1) shall be determined and paid as prescribed by the Administrator; (2) shall not exceed $10 with respect to any one claim; and (3) shall be deducted from monetary benefits claimed and allowed.[2]

In 1985, the ten dollar limitation was upheld by the Supreme Court in the face of an allegation that it had the effect of unconstitutionally denying veterans the right to a lawyer in benefit cases.[3] Legislation has been introduced in the 100th Congress to raise the limitation to $500 and to allow the Administrator to approve a higher fee if he finds "extraordinary circumstances" present.[4]

THE ORIGINAL STATUTE

In 1862, Congress enacted a law providing "[t]hat the fees of agents and attorneys for making out and causing to be executed the papers necessary to establish a claim for a pension, bounty, and other allowance before the Pension Office under this act, shall not exceed . . . five dollars."[5] "The object of the committee in inserting" the five dollar limitation in the 1862 bill, according to a contemporaneous statement on the floor of the House,

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[1] This may be viewed as part of an effort on the part of Congress, throughout its entire history, to provide veterans' benefits and to prevent their diversion to persons other than the veterans entitled to them. The First Congress enacted a statute providing that ". . . no sale, transfer or mortgage of the whole or any part of the pension or arrearages of pension, payable to any non-commissioned officer, soldier or seaman, before the same shall become due, shall be valid." 1 Stat. 243, 245 (1792). Similarly, an 1828 statute provided that "surviving officers of the army of the Revolution" shall be entitled to benefits which "shall not, in any way, be transferable or liable to attachment, levy, or seizure, by any legal process whatever, but shall inure wholly to the personal benefit of the officer or soldier entitled to the same by this act." 4 Stat. 269, 270 (1828). Today, veterans' benefits remain immune from garnishment, even in cases seeking alimony and child support (such cases are the only ones in which federal wages and benefits generally may be garnished). 38 U.S.C. 3101(a), 42 U.S.C. 662(f)(2). (In *Rose* v. *Rose*, 55 U.S.L.W. 4630 (U.S. May 18, 1987), the Supreme Court held that the federal exemption of veterans' benefits from garnishment does not preclude a state court from holding "a disabled veteran in contempt for failing to pay child support, where the only means of satisfying this obligation is to utilize benefits received from the Veterans' Administration. . . ." The Court quoted 1980 legislative history indicating that veterans' disability benefits are intended to compensate "veterans *and their families*" (emphasis supplied by the Court)).

[2] 38 U.S.C. 3404(c).

[3] *Walters* v. *National Association of Radiation Survivors*, 473 U.S. 305 (1985). The Court did not, however, preclude the possibility that the ten dollar limitation could be unconstitutional as applied in a particular case. *See*, 473 U.S. at 336 (O'Connor, J., concurring).

[4] H.R. 639 and S. 11. These bills are not identical; they have been referred to the respective Committees on Veterans' Affairs.

[5] 12 Stat. 566, 568 (1862).

> was to prevent the numerous frauds committed by pension agents upon applicants for pensions, and to limit by law their compensation to a fair remuneration for services actually rendered.[6]

Another Member of Congress commented:

> I think that the class of persons especially provided for by this act ought to be protected from sharpers; while the class intended to be provided for in this bill are the most meritorious class in the Union, they are at the same time more liable than any other to be imposed upon by sharpers and speculators. . . .[7]

In addition to the desire "to protect the soldier from the rapacity of these agents,"[8] there may have been another reason for the fee limitation. The Supreme Court, in the 1985 *Walters* case, wrote:

> The Government interest, which has been articulated in congressional debates since the fee limitation was first enacted in 1862 during the Civil War, has been this: that the system for administering benefits should be managed in a sufficiently informal way that there should be no need for the employment of an attorney to obtain benefits to which a claimant was entitled, so that the claimant would receive the entirety of the award without having to divide it with a lawyer.[9]

However, the Court did not cite any 1862 debates. Furthermore, Justice Stevens noted in his dissent in this case:

> At the time the $10-fee was enacted, Congress presumably considered the fee reasonable. The legal work involved in preparing a veteran's claim consisted of little more than filling out an appropriate form, and, in terms of the average serviceman's base pay, a $10 fee then was roughly the equivalent of a $580 fee today. At its inception, therefore, the fee limitation had neither the purpose nor the effect of precluding the employment of reputable counsel by veterans. Indeed the statute then, as now, expressly contemplated that claims for veterans' benefits could be processed by "agents or attorneys."[10]

This view seems to be supported by a remark by a Member of Congress in 1862 "that five ollars is a sufficient compensation to a pension agent, who has the forms furnished to him by the Government, for making out an application. . . ."[11] Thus, while protecting veterans from rapacious agents was clearly a factor in enactment of the 1862 legislation, it is less clear that avoiding altogether the need for counsel also was.

1864 STATUTE

In 1864, Congress raised the fee limitation to ten dollars, which is the present limitation.[12] No floor debate addressing the raising of the fee limitation has been found.

1866 STATUTE

In 1866, a joint resolution was adopted "respecting Bounties to Colored Soldiers, and the Pensions, Bounties, and Allowances to their Heirs."[13] It limited agent and attorney fees to five dollars, seven and a half dollars, and ten dollars, depending on the amount of the claim; no floor debate on this feature of the bill has been found.

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[6] Cong. Globe, 37th Cong., 2d Sess. 2101 (1862)(remarks of Mr. Harrison).
[7] Cong. Globe, 37th Cong., 2d Sess. 3213 (1862)(remarks of Mr. Holman).
[8] Cong. Globe, 37th Cong., 2d Sess. 2101 (1862)(remarks of Mr. Wheeler).
[9] Note 3, *supra*, 473 U.S. at 321.
[10] *Id.* at 360–361 (Stevens, J., dissenting).
[11] Note 6, *supra*.
[12] 13 Stat. 387, 389 (1864).
[13] 14 Stat. 367 (1866).

1870 STATUTE

In 1870, Congress enacted a statute providing:

> That the fee of agents and attorneys for the preparation and prosecution of a claim for pension or bounty land, under any or all the various acts of Congress granting the same, shall not exceed in any case the sum of twenty-five dollars.[14]

In addition, fees over ten dollars had to be approved by the Commissioner of Pensions.[15] This statute was more comprehensive than the previous ones; as one Congressman stated:

> We passed in 1864 a law fixing a fee of ten dollars to claim agents for prosecuting claims for pensions. But under the wording of the statute it only applies to that particular act, by virtue of which very few pensions are granted, leaving as regards the great mass of pension cases no limit to the fees which the claim agent may charge. Now, in this report, we provide—and make the provision applicable to all acts granting pensions and to all acts granting bounty lands—that where no compensation is agreed upon by the parties ten dollars shall be the legal fee in all cases.
>
> But we further provide that the parties may have the privilege of contracting with the claim agents for the prosecution of their claims, to pay a fee not exceeding twenty-five dollars. It is also provided that in all such cases the contract shall be executed in duplicate, without any expense to the pensioner, and filed with the papers with the Commissioner of Pensions, and be subject to his approval. . . .
>
> It seems to be necessary that we should permit these parties to contract for a larger fee than ten dollars. The cases now pending are, the most of them, of such a character as to require extra labor to get them through. . . . But lest there be some advantage taken in some cases we permit the Commissioner of Pensions to annul even that contract, if he thinks undue influences have been exerted upon the pensioner.[16]

The twenty-five dollar figure may have constituted a compromise between those who sought an unlimited exemption from the ten dollar ceiling for some cases and those who believed that there should be no exceptions to the limit. One Senator had offered an amendment to allow claimants to enter into any agreement in connection with claims that "require laborious and extended services"; the only protection for claimants the amendment would have provided would have been to require that "a proper officer of the law" certify that the agreement "had been fully explained and understood [by the claimant] prior to the [claimant's] signature."[17] This Senator had argued that there was "a large class of claims which . . . no attorney can undertake . . . for ten dollars in each case; hence the result will be in effect to abolish the pension laws so far as those claims are concerned."[18] Another Senator had opposed this amendment:

> It is true that there are some cases where it would be proper to give more; but if you let down the bars and say that the soldier or claimant may make a contract with an attorney for any sum they please, then the experience of our pension laws and pension administration demonstrates that in eight cases in ten of extended compensation it is wrong and an outrage upon the soldier, from which he ought to be protected. Therefore, although it operates hard in a few cases, it operates efficiently on the whole.[19]

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[14] 16 Stat. 193, 194-195 (1870).
[15] *Id.* at 195.
[16] Cong. Globe, 41st Cong., 2d Sess. 5015 (1870)(remarks of Mr. Benjamin).
[17] Cong. Globe, 41st Cong., 2d Sess. 4459 (1870)(remarks of Mr. Thayer).
[18] *Id.*
[19] Cong. Globe, 41st Cong., 2d Sess. 4459 (1870)(remarks of Mr. Edmunds).

1873 STATUTE

In 1873, Congress enacted "An Act to revise, consolidate, and amend the Laws relating to Pensions."[20] It retained the twenty-five dollar limitation:

> That no agent or attorney or other person . . . shall demand or receive any other compensation for his services in prosecuting a claim for pension or bounty-land than such as the commissioner of pensions shall direct to be paid to him, not exceeding twenty-five dollars. . . .[21]

No floor debate addressing the twenty-five dollar limitation has been found.[22] This statute contains no language similar to the 1870 provision allowing agents and attorneys to charge up to ten dollars without the Commissioner's approval. However, this feature of the 1870 provision apparently remained on the books, as it appears in the 1873 Revised Statutes.[23]

1878 STATUTE

In 1878, the limitation was once again made ten dollars, except for fee contracts previously approved by the Commissioner of Pensions.[24] "No fee contract shall hereafter be filed with the Commissioner of Pensions in any case."[25] Senator Conkling said:

> I have received from soldiers—not from pension agents or attorneys, but from officers and privates—telegrams and letters . . . protesting earnestly against this on several grounds. . . . [I]t is said by these correspondents that there is great difficulty now in getting competent persons, lawyers or agents, to assume and conduct pension cases where there are difficulties; that if it is provided that they cannot pay to exceed $10 in any case, the result will be a general refusal to take and manage their cases, and that although well-intentioned to protect them, the effect will be anything but that. . . .
>
> [I]t is to select this class of persons and treating them as wards of the nation to assume that they are not competent to make their own contracts. . . .[26]

Senator Withers countered, and also set forth a rationale for the bill:

> I will state that so far as we are supposed to assume any power to act as guardians for pensioners and to place them in the light of wars, that is done by existing legislation. The provisions of the pension laws already, in order to protect the interests of pensioners, fix the price at $15 [sic] which shall be paid to these pension agents. . . . It was thought under the operation of that law the pensioners' interest would be protected; but we are informed now by official communication from the Commissioner of Pensions, indorsed by the Secretary of the Interior, that the present restrictions of the law have been to a very considerable degree avoided by the establishment of subagencies throughout the country. These pension agents if possible have a large number of subagents through the country who get up all the pension cases in their respective neighborhoods, and it is claimed that the present provision of law does not apply to the charges which such an agent may make against the pensioners. Therefore they claim a very large amount in proportion to the sum realized by the pensioners in these cases. The bill was designed to correct this abuse. . . .
>
> [T]here is a large number of pension agents here who advertise that they will take all cases for the sum of $10. There is no danger whatever of the interests of pensioners suffering in this regard. The danger is that for the want of such a law they will suffer.[27]

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[20] 17 Stat. 566 (1873).

[21] *Id.* at 575.

[22] The limitation was added on the Senate floor "on the recommendation of the Commissioner of Pensions." Cong. Globe, 42d Cong., 3d Sess. 1348 (1873).

[23] 18 Stat. 937 (1873); R.S. 4786. The twenty-five dollar limitation appears on the same page of the Revised Statutes, in R.S. 4785.

[24] 20 Stat. 243 (1878).

[25] 7 Cong. Rec. 4840, 45th Cong., 2d Sess (1878)(remarks of the Presiding Officer of the Senate).

[26] *Id.* (remarks of Mr. Conkling).

[27] *Id.* at 4840-4841 (remarks of Mr. Withers). The fifteen dollar figure cited appears to be a mistake, as no statute between 1873 and 1878 appears to have adopted this figure. Senator

Continued

Senator Conkling responded to the last point as follows:

> The Senator has not lived so long without learning that one of the dearest of all commodities is cheap law. The Senator would not like to be confined, if he were to employ legal agents to do his business, to those who would advertise to do it for less than somebody else, and particularly if they were confined to a special locality.[28]

Senator Withers again countered:

> That is perfectly true; but we have a system of pension laws here by which the services of agents in all ordinary cases can be dispensed with entirely. . . . All that is necessary is to fill up the blank and furnish the information and send it to the Commissioner of Pensions. . . .[29]

Senator Kirkwood raised another point in support of reducing the ceiling from twenty-five to ten dollars:

> The result of the present law is substantially this: that over 40 per cent.—nearly 50 per cent.—of the amount of applications filed with the Commissioner of Pensions are rejected upon examination. They are taken by agents without examination, because the agent gets $25 and is willing to the risk of getting them through. They are taken without examination and thrust upon the bureau, and entail upon the bureau an immense amount of labor that would not be required if the cases were examined before they went there, as they would be if this proposed law went into effect.[30]

During House consideration of this measure, two Members unsuccessfully sought a compromise of fifteen dollars, one stating that "[t]he majority of the Committee on Invalid Pensions think that $10 is entirely too small a sum."[31]

1884 STATUTE

In 1884, Congress repealed the 1878 Act, except with respect to existing contracts, and enacted a limitation of twenty-five dollars if approved by the Commissioner of Pensions and ten dollars otherwise.[32] A committee report that accompanied this legislation summarized the fee limitations to date:

> The periods covered by legislation on this subject may be divided into three:
>
> The first from 1862 to 1870, and governed by the acts of July 14, 1862 (sections 6 and 7), and that of July 4, 1864 (section 12). The first act provided that an agent or attorney in a pension or bounty-land claim should receive as his compensation a fee not to exceed a sum of $5 for making out and filing a declaration, and an additional sum of $1.50 for each affidavit required and filed as additional testimony, except the affidavits of surgeons.
>
> The second-named act (1864) repealed the former, and provided that such agent or attorney should be entitled to a fee not to exceed the sum of $10. . . .
>
> The second period was from 1870 to 1878, governed by the act of July 8, 1870 (section 7), wherein it was provided that the fee of agents and attorneys, for preparation and prosecution of claims for pension and bounty land, should not exceed the sum of $25. Such agent or attorney was required to file with the Commissioner of Pensions for his approval duplicate articles of agreement, without cost to the claimant, setting forth the amount of fee agreed upon. Also that in such cases where no fee-agreement was filed, the fee should not exceed $10. It was further provided that the fee in any case should not be paid, except upon the allowance of the same, and then to be paid by the pension agent [this refers to a government agent, not the claimant's agent] out of the first payment of the pension. . . .
>
> The third period was from 1878 to the present time, and governed by the act of June 20, 1878. This act . . . reversed the order of things entirely. It reduced the fee or rather limited the same to $10.[33]

Kernan during the debate corrected Senator Withers (and Senator Conkling, who had accepted Mr. Wither's figure), stating that "the present law allows $25." *Id.* at 4841 (remarks of Mr. Kernan).

[28] *Id.* at 4841 (remarks of Mr. Conkling).

[29] *Id.* (remarks of Mr. Withers).

[30] *Id.* (remarks of Mr. Kirkwood). The problem addressed by Senator Kirkwood is dealt with in the present statute by allowing a fee only if benefits are awarded. 38 U.S.C. 3404(c)(3).

[31] *Id.* at 3578 (remarks of Mr. Rice).

[32] 23 Stat. 98, 99 (1884).

[33] House Select Committee on Payment of Pensions, Bounty, and Back Pay, Report to accompany H.R. 3882, 48th Cong., 1st Sess. (1884), *printed in* 15 Cong. Rec. 3237-3238, 48th Cong., 1st Sess. (1878).

The report continued, explaining the problems perceived with the 1878 Act that warranted its repeal:

> It left the attorney and the claimant to adjust the payment, the amount only being limited by law. In its operations it failed even to protect the claimant as to the amount of fee, only to the extent that any one attorney could not receive a greater sum than $10, while others might succeed one another to the attorneyship and "bleed" the claimant. We feel justified in quoting from the report of Commissioner Dudley at length upon the necessities of a statutory substitute to the existing law. On pages 16 and 17, report for the year June 30, 1883, the Commissioner says:
>
> "... The construction which has heretofore been placed upon the act of June 20, 1878, by which agents and attorneys claim and exact generally their fee in advance, has, I think, operated to practically exclude from the practice many educated, responsible, and useful attorneys, and has attracted to it many ignorant, unscrupulous, and useless persons, whose only object seems to be, first, to procure applications from soldiers, regardless of merit, to be filed through them, and then, while acting simply as transmitters of papers, assiduously dun the claimant until the ten-dollar fee is secured, and thereafter practically abandon the case, like a 'squeezed orange,' preferring rather to seek new victims than to expend time in serving old ones.
>
> "... In my opinion the remedy lies ... in the substantial re-enactment of the law in force at the time said act of June 20, 1878 was passed, the salient points to be covered being, first, the establishment of a reasonable fee for the claim agent or attorney; second, the agreement therefor to be by written contract, which, as to the amount of the fee, shall be subject to the approval and discretion of the Commissioner of Pensions, and the form to be prescribed by him; third, the payment of such fee to be contingent upon the successful prosecution of the claim; fourth, the payment thereof to be made by the pension agent. ..."
>
> The present limit of fee to $10 practically excludes local attorneys and throws the business into the hands of those who conduct large claim bureaus. In small communities where the claimant can meet his attorney and explain the circumstances whereby he can proceed intelligently to obtain the necessary testimony in his case, and where also the witnesses of many of them reside, the difficulties are much lessened in proving his case. But with a fee limited to $10 the country practitioner finds it unprofitable to devote his time to such services. ...[34]

In sum, the 1878 Act had been intended to relieve the Commissioner of Pensions of the "unnecessary labor in executing" the fee agreements required by the previous statute, but, by abolishing "the contingency of success" had "stimulated many irresponsible" agents to take claims, regardless of their merit, "obtain in advance the legal fee of $10, and thenceforth abandon the claim, thus encumbering the files of the office and hindering and delaying meritorious claimants. ..."[35]

1890 STATUTE

In 1890, Congress enacted a statute "granting pensions to soldiers and sailors who are incapacitated for the performance of manual labor, and providing for pensions to widows, minor children, and dependent parents."[36] It contained a ten dollar fee limitation, which was agreed to on the floor of the Senate without debate.[37]

1891 STATUTE

This statute provided:

> That hereafter no agent or attorney shall demand, receive, or be allowed any compensation under existing law exceeding two dollars in any claim for increase of pension on account of increased disability for which the pension has been allowed, or for services rendered in securing the passage of any special act of Congress granting a pension or an increase of pension. ...[38]

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[34] *Id.* at 3238.
[35] *Id.* at 3239-3240 (letter from Commissioner Dudley).
[36] 26 Stat. 182 (1890).
[37] 21 Cong. Rec. 2740, 51st Cong., 1st Sess. (1890).
[38] 26 Stat. 1081, 1082 (1891).

Senator Sherman spoke in favor of the bill:

> [U]nder the existing practice, it is largely thrown upon members of Congress. I suppose, like every other Senator, I receive by the dozen the blank forms from pensioners which they want me to transmit to the Commissioner of Pensions. Then I must conduct correspondence with the pensioners, sometimes paying postage. The truth is that the agents throw more than one-half of all this business for which they get paid upon Senators and members of the House of Representatives. It seems to me, therefore, that the fee of $2 and $5 is ample compensation for these agents. They organize their business in such a way that there is but little work to be done. A merely formal application made under the new law could be written in about ten minutes.[39]

Senator Hawley disagreed:

> The pension agent is indispensable, absolutely indispensable the soldier. . . . I do not think the fees are unreasonable. . . . They have been very greatly reduced, reduced 60 per cent. by Congress. The Senator from Colorado reminds me that the fee was $25 in the first place.[40]

Senator Hale countered:

> [T]he whole busines of preparing and presenting the claims soldiers for the action of the Pension Bureau has been radically changed in the last ten years. Formerly the business of the soldier was largely done by pension-claim agents or lawyers who embarked on that business, who were near to the soldier, . . . attended to comparatively few cases . . . and it was proper and fitting that such agent should be fairly, perhaps liberally, compensated. . . .
>
> [A]ll that has passed away, and the pension business has been gradually concentrated from all over the country in the hands of a few men. A few great concerns, largely here in Washington . . . [handle] hundreds of thousands of cases. It is routine practice. It is easily done because the men employed are experts in the business. It can be done more cheaply because, like any business which is done on a large scale, it can be done at a less rate than where it is distributed in the hands of hundreds and thousands of small claims agents; therefore, there is no claim in equity on the part of these agents for as large fees as were formerly given.[41]

Senator Hale added:

> The States themselves, as has been indicated here in one instance, and the same is true in many others, have organizations at home, adjutant generals' offices of their own, and have pension departments in their governments, all of which are for the benefit of the soldier and make his way smooth and easy.[42]

Senator Cockrell proposed an amendment providing that *no* compensation be allowed for services rendered in securing the passage of any special act of Congress granting a pension or an increase of pension. He stated:

> [U]nder this last act of June 27, 1890, very little is necessary to be done by a claim agent or a pension attorney, very little. . . . There is very little to be done, and I think it will be a great blunder, if Congress should ever pass another pension law of any kind, to allow any fees. . . . [I]t can be done by a proper administration of the Pension Office in all its forms, and by the reduction of business there to a system which will expedite it and bring it up. Every pension claim can be adjusted without the intervention of a lawyer . . . and they ought not to be allowed.[43]

Senator Cockrell believed that it was wrong in effect to compel claimants to hire attorneys to prosecute their claims. He explained:

> We are not treating the soldiers of this country right. It is not justice to them. We took them into the service. We promised them a pension. We have passed laws declaring who are entitled to pensions. Now, we can ascertain that better than a pension agent can, and we ought to do it without compelling the soldier to employ a claim agent. But the ridiculousness and absurdity is all crowned when we take out of the money we allow the pensioner a fee and pay it over to a claim agent for prosecuting cases against ourselves.[44]

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[39] 22 Cong. Rec. 2176, 51st Cong., 2d Sess. (1891) (remarks of Mr. Sherman). The "$5" refers to a proposed amendment to limit fees to that amount in connection with claims filed under the 1890 Act. *Id.* at 2175.

[40] *Id.* at 2176 (remarks of Mr. Hawley).

[41] *Id.* at 2176 (remarks of Mr. Hale).

[42] *Id.* at 2177 (remarks of Mr. Hale).

[43] *Id.* at 2185 (remarks of Mr. Cockrell).

[44] *Id.*

1892 STATUTE

This Act granted pensions to women employed by the Surgeon General of the Army during the Civil War as nurses. It provided "That no fee, compensation, or allowance shall be paid to, received, or accepted by any agent, attorney, or other person instrumental in the prosecution of any claim for pension under this act. . . ."[45] Senator Cockrell said:

> That is a very just provision, and it will not enable the claim agents and pension sharks of Washington, when this bill has been passed, to write to these women and children that they have secured passage of the law, as they are claiming to have done with a bill which recently became a law.[46]

1901 STATUTE

This statute concerned Army and Navy pensions to remarried widows, and prohibited fees to claim agents or any other persons.[47] No legislative history discussing the fee prohibition has been found.

1907 STATUTE

This statute granted pensions to Civil War and Mexican War veterans and prohibited any "pension attorney, claim agent, or other person" from receiving compensation for presenting a claim under the Act.[48] Senator Hale spoke in favor of the prohibition:

> [I]t ought not to be left so that the pensioner falls into the hands of a pension attorney and is bled by him to a large extent for fees and sevices.[49]

In the House, Representative Southard objected that there was

> no penalty provided for the violation of the provisions of this act. There will be nothing to prevent an attorney or claim agent from taking a fee in advance, and I think the result will be that a charge will be made for these services, and it will result simply in a different method of collecting the fee. Now, I would like to ask the gentleman from New Hampshire [Mr. Sulloway] if he would accept an amendment. . . .[50]

Representative Sulloway responded:

> No. I say again I object to any amendment. This provision is absolutely harmless, and there is no penalty attached to it. It is as innocent as a babe on its mother's breast. [Cries of "Vote!"][51]

The bill was passed without additional amendment.[52]

1912 STATUTE

This Act also granted pensions to Civil War and Mexican War veterans, and prohibited attorneys and agents from receiving compensation for presenting claims under the Act, "except in applications for original pension by persons who have not heretofore received a pension."[53] The original bill (H.R. 1) contained no provi-

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[45] 27 Stat. 348, 349 (1892).
[46] 28 Cong. Rec. 6798, 52 Cong., 1st Sess. (1892) (remarks of Mr. Cockrell).
[47] 31 Stat. 1445, 1446 (1901).
[48] 34 Stat. 879 (1907)
[49] 41 Cong. Rec. 926, 59th Cong., 2d Sess. (1907)(remarks of Mr. Hale).
[50] *Id.* at 2222 (remarks of Mr. Southard).
[51] *Id.* (remarks of Mr. Sulloway).
[52] *Id.* A 1908 appropriations statute included a provision "That hereafter no pension attorney, claim agent, or other person shall be entitled to receive compensation for services rendered in securing the introduction of a bill or the passage thereof through Congress granting pension or increase of pension. . . " 35 Stat. 418, 419 (1908).
[53] 37 Stat. 112, 113 (1912).

sion concerning attorney or agent fees; the Senate Committee on Pensions reported the bill with an amendment permitting a fee of up to five dollars "payable only after the allowance of the claim and upon the order of the Commissioner of Pensions." The report stated:

> The majority of your committee supported another amendment which recognizes the right of pension attorneys to represent their clients in cases where it was thought proper that a soldier claimant should be entitled to legal service, as indicated in section 3. The amendment is carefully guarded so that in no case can anything but a nominal charge be made. We believe that this amendment will in many instances be beneficial, and that in no case can it operate to do an injustice to any veteran.[54]

On the floor of the Senate, Senator Root asked whether the 1907 prohibition of compensation was not still in force, and whether any abuses had developed under it which made changing it desirable.[55] Senator McCumber responded:

> [I]n ninety-nine cases probably out of a hundred there would never be any occasion for an attorney at all, but undoubtedly there will be occasion for an attorney once in awhile, and it was simply provided that if the claimant himself desires an attorney to appear before the department to present his case for the nominal fee of $2 he shall have that right and the commissioner shall recognize him.[56]

Senator Root responded:

> Then, I will complete my inquiry by asking whether, in the comparatively small number of exceptional cases in which an applicant for a pension needs advice and assistance, it would not be better for us to have an officer connected with the Pension Bureau whose duty it shall be to give the necessary advice to these men. I do not believe in turning loose a horde of hungry lawyers and pension agents upon these old pensioners.[57]

Meanwhile, in the House, the prohibition of compensation, except for the exception for original pensions, was introduced on the floor and passed without debate.[58] The House language, with the addition of the exception for original pensions, was introduced on the Senate floor by Senator Gallinger.[59] Senator McCumber opposed the fee prohibition:

> My view is that the soldier should be regarded as an intelligent American citizen and be permitted to do as he pleased [sic] about employing an attorney. . . . I hardly think it is necessary for the Senate to consider itself his guardian to the extent that it shall say to him that he shall not have the privilege of expending $2 out of his pension in any way that he sees fit. [Applause in the galleries.][60]

Senator Gallinger countered:

> The Senator from North Dakota wants the soldiers treated as intelligent men. That is precisely what this amendment proposes to accomplish, and we believe they are intelligent enough to know that they do not need the services of an attorney to determine their ages or their names when the names and ages are on record at the Pension Office at the present time. . . .
>
> Pension attorneys . . . have reaped a rich reward from our pension legislation, and now that we are simply proposing automatically to increase the pensions of those who are on the rolls, we ought not to open the gates again to the pension attorneys of this country. . . . If [however] the soldier has not made application under any other law, we ought not to shut him out from the employment of an agent or an attorney. . . .[61]

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[54] S. Rep. No. 355, 62d Cong., 2d Sess. 10 (1912); *reprinted in* 48 Cong. Rec. 3144, 62d Cong., 2d Sess. (1912).
[55] 48 Cong. Rec. 3145, 62d Cong., 2d Sess. (1912)(remarks of Mr. Root).
[56] *Id.* (remarks of Mr. McCumber).
[57] *Id.* (remarks of Mr. Root).
[58] *Id.* at 282.
[59] *Id.* at 3548, 3989.
[60] *Id.* at 3549 (remarks of Mr. McCumber).
[61] *Id.* (remarks of Mr. Gallinger).

A conference committee adopted the bill without discussing the fee provision.[62]

1916 STATUTE

This Act increased pensions granted under a 1908 statute, prohibited agents and attorneys from participating in the adjudication of some claims, and permitted them to participate in the adjudication for others, but limited their fees in such cases to ten dollars "payable only upon the order of the Commissioner of Pensions."[63] A report of the Senate Committee on Pensions notes merely that ten dollars was the amount permitted under the 1890 Act.[64] Senator Smoot spoke in favor of the provision permitting fees up to ten dollars:

> Whenever there is a question of testimony that a widow will be compelled to submit to the department, she can not without assistance present it in the way that it must be presented. She can not prepare the required affidavits. . . . Now, we want to prevent any attorney or any claim agent from receiving more than $10 for such service. Not only that, but we go further and we limit the payment of that amount until the Commissioner of Pensions orders it paid. We have guarded it in every possible way; but I know that if that provision is not put into the law there will be thousands of widows in this country who will never receive the benefit of this act.[65]

The ten dollar limitation was justified in the debate by references to "the rapacity of agents and attorneys," "pension-claim sharks . . . robbing the applicants for pensions," and "pension-claim agents who have taken . . . as high as three years' pension [for their fee]."[66]

1917 STATUTE (JUNE 12, 1917)

This Act amended "An Act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department"[67] to provide, in pertinent part:

> No claim agent or attorney shall be entitled to receive any compensation whatever for services in the collection of claims against the Bureau of War Risk Insurance for death, personal injury, or detention, except where proceedings are taken in accordance with section five in a district court of the United States, in which case the judge shall, as a part of his determination and order, settle and determine the amount of compensation not to exceed ten per centum of the amount recovered. . . .[68]

This ten *percent* limitation (apparently the first time a percentage rather than a dollar limitation was adopted) was added on the floor of the Senate.[69] No debate on it has been found.

1917 STATUTE (OCT. 6, 1917)

This statute added two fee provisions to the same 1914 Act as was amended by the previous 1917 statute. The first provided:

> The director shall adopt reasonable and proper rules to govern the procedure of the divisions, to regulate the matter of compensation, if any, but in no case to exceed ten per centum, to be paid to claim agents and attorneys for services in connection with any of the matters provided for in articles two, three, and four. . . .[70]

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[62] *Id.* at 6235–6236 (Conf. Rep. No. 647, 62d Cong., 2d Sess. (1912)).
[63] 39 Stat. 844, 845–846 (1916).
[64] S. Rep. No. 586, 64th Cong., 1st Sess. 3 (1916).
[65] 53 Cong. Rec. 13958, 94th Cong., 1st Sess. (1916)(remarks of Mr. Smoot).
[66] *Id.* at 13958–13959 (remarks of Mr. Clapp and Mr. Smoot).
[67] 38 Stat. 711 (1914).
[68] 40 Stat. 102, 105 (1917).
[69] 65 Cong. Rec. 2708, 65th Cong., 1st Sess. (1917).
[70] 40 Stat. 398, 399 (1917).

The second fee provision was in section 405, which provided for judicial review of claims and authorized federal district courts to

> determine and allow such reasonable attorney's fees, not to exceed ten per centum of the amount recovered, to be paid by the claimant on behalf of whom such proceedings are instituted to his attorney. . . . No other compensation or fee shall be charged or received by any person except such as may be authorized by the commissioner in regulations to be promulgated by him. . . .[71]

Neither the committee reports nor floor debate appears to have discussed either fee limitation.

1918 STATUTE (MAY 20, 1918)

This statute amended the first fee provision in the October 6, 1917 statute to provide:

> *Provided, however,* That payment to any attorney or agent for such assistance as may be required in the preparation and execution of the necessary papers shall not exceed $3 in any one case: *And provided further,* That no claim agent or attorney shall be recognized in the presentation or adjudication of claims under articles two, three, and four, except that in the event of disagreement as to a claim under the contract of insurance between the bureau and any beneficiary or beneficiaries thereunder, an action on the claim may be brought against the United States . . . and . . . the court, as part of its judgment, shall determine and allow such reasonable attorney's fees, not to exceed five per centum of the amount recovered, to be paid by the claimant in behalf of whom such proceedings were instituted, to his attorney, said fee to be paid out of the payments to be made to the beneficiary under the judgment rendered at a rate not exceeding one-tenth of each of such payments until paid.[72]

This legislation was reported by the House Committee on Interstate and Foreign Commerce with the three dollar ceiling for the preparation of papers, but with a ten percent ceiling for court awarded fees. The Committee Report set forth a letter from the Secretary of the Treasury which referred to claims attorneys as "unscrupulous," "heartless," "rapacious," and "sharks who are already seeking to prey upon the beneficiaries."[73] On the floor, Representative Treadway said:

> Unless there is some joker we have not discovered, enactment of this bill will absolutely prevent applications being made by claim agents in behalf of beneficiaries under the act who would prevent them from obtaining all that is justly their due. There is no need for the intercession of agents or attorneys in these claims. . . . It is not the intent of Congress that these mercenary claim-agent leeches should sap the blood of any financial benefit from the Government by putting up these false claims and establishing their right to 10 per cent commission for doing nothing, and doing what the Government itself intend to do in every individual case. . . . There are two places where attorneys or claim agents are recognized[.] One is the preparation of the papers and the execution of the necessary papers, where not to exceed $3 may be charged. That is simply a clerical service. Then, you will see the bill also recognizes attorneys in connection with a suit. . . . There is no other place where the claim agent can legally perform services, and it is not intended that there should be.[74]

Representative Green of Iowa objected to the fact that to permit up to ten percent in court awarded fees would mean

> that in a case where $10,000 is recovered, and in most of these cases $10,000 will be recovered, $1,000 attorney's fee can be taxed up against the claimant. I can fairly hear the shout of rejoicing that will go up among the ambulance chasers over this country when they read this provision of the bill.[75]

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[71] *Id.* at 410.
[72] 40 Stat. 555–556 (1918).
[73] H.R. Rep. No. 471, 65th Cong., 2d Sess. 1 (1918).
[74] 56 Cong. Rec. 5222–5223, 65th Cong., 2d Sess. (1918)(remarks of Mr. Treadway).
[75] *Id.* at 5224 (remarks of Mr. Green). At the same time, Representative Juul was concerned that the three dollar ceiling in some cases would prevent a claimant from securing needed legal assistance. *Id.* at 5225.

The debate continued:

> Mr. TREADWAY. It is in the original bill [the October 6, 1917 statute].
>
> Mr. GREEN OF IOWA. That is true; it is in the original bill, but it never ought to have been there, and the purpose of this bill ought to be to correct just such matters and prevent anything of that kind from taking place.
>
> Mr. LINTHICUM. Is not the gentleman wrong when he says that it provides a 10 per cent fee? Does not the law provide not exceeding 10 per cent?
>
> Mr. GREEN OF IOWA. If the gentleman has practiced law, as I presume he has, I will ask if he ever knew of a court cutting down those fees?
>
> Mr. LINTHICUM. I know the courts are very liberal, but we usually leave such matters to the courts.
>
> Mr. GREEN OF IOWA. I am an attorney myself. I know just how these things work, and every man who is an attorney in this House knows how it works. This provision ought to be stricken out.[76]

Representative Rayburn offered an amendment to replace the ten percent ceiling with a five percent ceiling, and the bill passed with that amendment.[77]

1918 STATUTE (JULY 16, 1918).

This statute granted pensions to widows and minor children of veterans "who served in the War with Spain, Philippine insurrection, or in China."[78] It limited fees to ten *dollars*, payable only on the order of the Commissioner of Pensions. The reports of both the House and Senate Committees on Pensions contain the following language:

> This is the same fee allowed in similar claims under the act of June 27, 1890, and amendments thereto. The dependent feature in the law will call for much correspondence and work by attorneys with its consequent cost, and if the fee be placed less than $10 it is believed the better class of attorneys would not care to undertake the prosecution of such claims, which in many cases would cause delay, and perhaps failure, of deserving claimants to secure benefits thereof. In many cases it is believed there will be no attorneys employed at all, and hence no fee incurred.[79]

On the House floor, Representative Raker offered an amendment to prohibit fees entirely, stating:

> [T]here is no possible excuse to-day [for allowing attorney fees] under the procedure of the Pension Bureau, where claims are prepared and made out, where the affidavits are prepared and where Members of Congress look after the cases, and where There is no expense to the applicant, for having $10 taken from the widow or the minor child. . . . This $10 is solely and entirely for the purpose of maintaining bureaus here in Washington for the purpose of taking out of these widows' portions $10, and nothing else. The Government is appropriating this money for the pension attorneys.[80]

The amendment was rejected, in part for fear that consideration of the amendment might prevent "early passage" of the bill.[81]

1920 STATUTE

This Act granted pensions to "soldiers and sailors of the War with Spain, the Philippine insurrection, and the China relief expedition."[82] It limited fees to twenty dollars, payable only upon the order of the Comissioner of Pensions. No legislative history addressing the fee provision has been found.

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[76] *Id.* at 5224 (remarks of Messrs. Treadway, Green, and Linthicum).
[77] *Id.* at 5226.
[78] 40 Stat. 903 (1918).
[79] H. Rep. No. 675, 65th Cong., 2d Sess. 7 (1918); S. Rep. No. 479, 65th Cong., 2d Sess. 8 (1918).
[80] 56 Cong. Rec. 8924, 65th Cong., 2d Sess. (1918)(remarks of Mr. Raker).
[81] *Id.* (remarks of Mr. Langley).
[82] 41 Stat. 982 (1920).

1922 STATUTE

This Act granted relief to, among others, "soldiers and sailors of the War with Spain, Philippine insurrection, and Chinese Boxer rebellion campaign."[83] It limited fee to ten dollars, payable only upon the order of the Commissioner of Pensions. No legislative history addressing the fee provision has been found.

1924 STATUTE (MAY 19, 1924)

This Act, entitled the "World War Adjusted Compensation Act," prohibited fees for assisting a veteran or his dependents in obtaining benefits under the Act.[84] No legislative history addressing the fee provision has been found.

1924 STATUTE (JUNE 7, 1924)

This statute, entitled the "World War Veterans' Act, 1924,"[85] had two fee provisions. Section 19 provides, in pertinent part:

> That no claim agent or attorney except the recognized representatives of the American Red Cross, the American Legion, the Disabled American Veterans, and the Veterans of Foreign Wars and such other organizations as shall be approved by the Director [of the United States Veterans' Bureau], shall be recognized in the presentation or adjudication of claims under Titles II, III, and IV, except that in the event of disagreement as to claim under a contract of insurance between the bureau and any beneficiary or beneficiaries thereunder an action on the claim may be brought against the United States. . . . [T]he court, as part of its judgment, shall determine and allow such reasonable attorney's fee, not to exceed 5 per centum of the amount recovered, to be paid by the claimant . . . out of the payments to be made to the beneficiary under the judgment rendered at a rate not exceeding one-tenth of each of such payments until paid.[86]

Section 500 provides:

> That payment to any attorney or agent for such assistance as may be required in the preparation and execution of the necessary papers in any application to the bureau shall not exceed $10 in any one case. . . . *Provided*, That the provisions of this section shall not apply to professional services required in the prosecution of any action in any court of law.[87]

The only comment found in the legislative history that addresses fees was the following of Senator Reed on the provision prohibiting attorneys other than recognized representatives of approved groups:

> The present law, as the Senate knows, is very strict in keeping out attorneys and claim agents from the Veterans' Bureau. It was desired to relax it to the extent of allowing the representatives of these welfare organizations to appear. . . . We are not desirous of extending the privilege to every such organization, because there are more than 100 associations or organizations that call themselves "welfare organizations" in some connection with veterans, some of which, I am sorry to say, are nothing more or less than an excuse to furnish an office and a salary here in Washington for the man who is at the head of the organization. Some of them are highly deserving. In order to take care of the deserving ones, we propose to insert . . . the following words:
>
> and such other organizations or veterans as shall be approved by the director.[88]

1925 STATUTE

This statute amended section 500 of the World War Veterans' Act, 1924 (the second fee provision quoted above) to raise from five

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[83] 42 Stat. 834 (1922).
[84] 43 Stat. 121, 125 (1924).
[85] 43 Stat. 607 (1924).
[86] *Id.* at 612-613.
[87] *Id.* at 628.
[88] 65 Cong. Rec. 7854, 68th Cong., 1st Sess. (1924) (remarks of Mr. Reed).

percent to ten percent the maximum attorney fee allowable under section 19 (the first fee provision quoted above).[89] Senator Reed explained the reason for doing so:

> [I]nasmuch as the total judgment can only be for the accumulated payments due, and is very seldom as much as $500, the fee of $50, we thought, was not excessive to an attorney who carries on such a suit.[90]

1926 STATUTE (JULY 3, 1926, PUBLIC NO. 454)

This statute, which granted pensions and pension increases to various veterans, veterans' widows, and nurses prohibited fees in connection with claims for pension increases, and limited fees in other cases to ten dollars, payable only on the order of the Commissioner of Pensions.[91] No legislative history addressing the fee provision has been found.

1926 STATUTE (JULY 3, 1926, PUBLIC NO. 472)

This statute amended the World War Adjusted Compensation Act to, among other things, prohibit the collection of any attorney fee under the Act.[92] No legislative history addressing the fee provision has been found.

1927 STATUTE

This statute, which granted pensions to soldiers who served in Indian wars from 1817 to 1898, prohibited fees in connection with claims for pension increases, and limited fees in other cases to ten dollars, payable only on the order of the Commissioner of Pensions.[93] No legislative history addressing the fee provision has been found.

1928 STATUTE

This statute, which granted pensions and pension increases to Civil War veterans and their widows, prohibited fees in connection with claims for pension increases and did not contain a fee provision regarding other cases.[94] No legislative history addressing the fee provision has been found.

1930 STATUTE (JUNE 2, 1930)

This statute granted pensions and pension increases to veterans "of the war with Spain, the Philippine insurrection, or the China relief expedition."[95] It prohibited fees in connection with claims "when claimant is already on the pension rolls under the Act of May 1, 1926, or any other prior pension Acts," or in connection with claims for an increase of pension. In other cases, however, it allowed a fee of up to ten dollars, payable upon the order of the Commissioner of Pensions.[96] No legislative history addressing the fee provision has been found.

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[89] 43 Stat. 1302, 1311 (1925).
[90] 66 Cong. Rec. 5263, 68th Cong., 2d Sess. (1925)(remarks of Mr. Reed).
[91] 44 Stat. 806, 807 (1926).
[92] 44 Stat. 826, 828 (1926).
[93] 44 Stat. 1361, 1363 (1927).
[94] 45 Stat. 714, 715 (1928).
[95] 46 Stat. 492 (1930).
[96] *Id.* at 493–494.

1930 STATUTE (JUNE 9, 1930)

This statute, which granted pensions and pension increases to Civil War veterans, prohibited fees in connection with pension increases and allowed up to ten dollars, payable only on the order of the Commissioner of Pensions, in connection with claims for original pensions.[97] No legislative history addressing the fee provision has been found.

1936 STATUTE

This statute was designed, among other things, "to effect uniform provisions in laws administered by the Veterans' Administration."[98] Section 200 provided, in part:

> The Administrator of Veterans' Affairs is hereby authorized to recognize representatives of the American National Red Cross, the American Legion, the Disabled American Veterans of the World War, the Grand Army of the Republic, the United Spanish War Veterans, Veterans of Foreign Wars, and such other organizations as he shall approve, in the presentation of claims under statutes administered by the Veterans' Administration. . . .[99]

Section 201 provided, in part:

> The Administrator of Veterans' Affairs is hereby authorized . . . to recognize agents and attorneys in the preparation, presentation, and prosecution of claims under statutes administered by the Veterans' Administration. . . .
>
> The Administrator of Veterans' Affairs is further authorized to determine and pay fees in allowed claims for monetary benefits under statutes administered by the Veterans' Administration to agents and attorneys. . . . *Provided*, That payment of such fees shall not exceed $10 in any one claim and in all cases fees shall be deducted from the amount of the monetary benefits allowed.[100]

Section 203 provided that the statute shall not affect various previously enacted fee provisions, namely, those cited in footnotes 52, 84, 87, 89, and 92 of this report. Section 203, however, repealed all other provisions—

> pertaining to recognition of organizations or recognition of or payment of fees to agents, attorneys, or other persons, for the preparation, presentation, or prosecution of claims for benefits administered by the Veterans' Administration. . . .[101]

A committee report accompanying the legislation stated that it was intended

> to codify, consolidate, and make uniform certain sections of the present laws and regulations relating to . . . the recognition and control of agents and attorneys . . . and the penalty provisions of the existing law for charging or attempting to charge beneficiaries illegal or excessive fees.[102]

Although recodified, 1936 statute in substance remains in effect today.[103]

Conclusion

The thread that seems to run throughout the attorney fee limitations in the veterans' benefits statutes enacted from 1862 through 1936 is the desire to protect claimants from rapacious attorneys. In some of these statutes no fee was permitted, and in these cases Congress presumably believed that legal assistance was unneces-

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[97] *Id.* at 529-530.
[98] 49 Stat. 2031 (1936).
[99] *Id.*
[100] *Id.* at 2032.
[101] *Id.* at 2032-2033.
[102] H. Rep. No. 2899, 74th Cong., 2d Sess. 1 (1936).
[103] 38 U.S.C. 3401-3405.

sary. In most of the statutes, however, the permissible fee ranged from five dollars to twenty-five dollars, and the congressional debate focused on how much was reasonable; that is, what fee was necessary to ensure that adequate legal assistance would be forthcoming while at the same ensuring that lawyers did not take advantage of veterans. It does not appear that these fee limitations (as opposed to the fee prohibitions) generally were intended as an indirect means to keep lawyers out of the process.

Supporting this view is the prevalence of provisions requiring approval of the Commissioner of Pensions before a fee could be awarded. This official presumably was not expected in the ordinary case to reduce the congressionally sanctioned fee; as stated in the debate on the 1870 statute, he was to act if "undue influences have been exerted upon the pensioner." Also supporting the view that fee limitations were not intended to keep lawyers out is the fact that some statutes prohibited fees in connection with claims for increased pensions but allowed limited fees in connection with claims for original pensions. These statutes indicate that Congress distinguished between those cases in which it deemed legal assistance unnecessary and those in which it did not (and it made this distinction as late as 1930).

Even where Congress authorized legal assistance, however, it did not consider representation by attorneys necessarily to be required. Ever since 1862, the veterans' benefits statutes authorized representation by "agents" as well as by "attorneys." Starting in 1924, Congress provided for recognition of veterans' organizations as representatives of claimants. The 1924 statute permitted only agents and attorneys recognized by such organizations to represent claimants, and allowed them a fee of up to five percent of the amount recovered. The 1936 statute, the substance of which is still on the books, permitted representatives of such organizations to assist claimants provided they do not receive a fee, and also allowed other agents or attorneys to represent claimants for a fee of up to ten dollars.

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